ADOPTED BY THE
MAYOR AND COUNCIL

June 9, 2009

RESOLUTION NO. 21313

RELATING TO DEVELOPMENT; APPROVING AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TUCSON AND OT KINO, LLC FOR THE DEVELOPMENT OF THE PLAZA CENTRO PROJECT; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Development Agreement between the City of Tucson, and OT Kino, LLC for the Development of the Plaza Centro Project, attached hereto as Exhibit "A," is approved.

SECTION 2. The Mayor is hereby authorized and directed to execute said Development Agreement for and on behalf of the City of Tucson and the City Clerk is directed to attest the same.

SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this resolution become immediately

effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, June 9, 2009.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

MR/dc
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DEVELOPMENT AGREEMENT

for

THE PLAZA CENTRO PROJECT

THIS DEVELOPMENT AGREEMENT is made and entered into this 9 day of June, 2009, by and between the following Parties:

THE CITY OF TUCSON, an Arizona municipal corporation (hereafter called the "City")
P.O. Box 27210
Tucson, Arizona 85726-7210

And

OT Kino , LLC, an Arizona limited liability company (hereafter called "Developer")
2940 North Swan Road #212
Tucson, Arizona 85712

RECITALS

A. This Agreement is entered into by authority of Arizona Revised Statutes (A.R.S.) § 9-500.05, which authorizes the City to enter into an agreement with any person or entity having an interest in real property providing for the development of such property, establishing the permitted uses of the property, and establishing certain development rights.

B. This Agreement is intended to be all of the following:

1. A development agreement between City and Developer (hereinafter collectively referred to as the "Parties") pursuant to A.R.S. § 9-500.05 for purposes of determining development rights and obligations replacing the existing Offer to Exchange dated November 1, 2005 and the Purchase Option Agreement dated February 6, 2007; and

2. A real estate sales agreement transferring fee simple title to the Parcel I and Parcel II Properties (hereafter referred to as the "Parcel I Property" and the "Parcel II Property", collectively called the "Property")

from City to Developer. The Parcel I Property and Parcel II Property are more specifically described in Exhibits 1a and 1b, attached to this Agreement. The Parcel I Property consists of approximately 60,870 square feet of property across from the former Greyhound site adjacent to the railroad tracks. The Parcel II Property consists of approximately 46,730 square feet of property including the former Greyhound site and adjacent land. The boundaries of both the Parcel I and Parcel II Properties are approximate and are subject to adjustment and final determination prior to the end of the period described in **Section 3.2(c)** of this Agreement.

C. This Agreement concerns the project site composed of the former Greyhound site and other property owned by the City adjacent to the former Greyhound site more particularly described in the Site Plan shown in Exhibit 2 attached to this Agreement and hereinafter collectively referred to as the "Project Site".

D. The essential concept and vision of the development of the Project Site ("Plaza Centro Project") is to create a mixed-use, high-density, pedestrian-oriented development at the Project Site.

E. It is the purpose of this Agreement that the City and Developer cooperate in the planning, design and construction of the Plaza Centro Project (also called the "Project" in this Agreement).

F. City and Developer desire to establish terms related to the construction of the Project and the financing of public infrastructure needed to serve the Project and surrounding areas.

G. The Project Site is situated within the existing corporate limits of the City.

H. The Parties expressly find and determine that the terms of this Agreement are justified based on the other considerations provided under this Agreement including, without limitation, the rights and liabilities conferred and imposed on the Parties and the economic development benefits to the community resulting from this Agreement.

I. This Agreement is subject to the provisions of A.R.S. § 38-511.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged and in consideration of the foregoing recitals, which are incorporated herein as the purpose and intent of the Parties in entering into this Agreement, and in consideration of the mutual covenants and obligations contained in this Agreement, the Parties agree as follows:

ARTICLE 1
SALES AGREEMENT

Section 1.1 Sale of Property to Developer. The Property shall be sold by City to Developer in accordance with **Sections 3.2 and 3.7**

ARTICLE 2
DUTIES OF THE CITY

Section 2.1 Project Manager. The City shall designate a City employee to serve as the Project Manager for the Project. The Project Manager's duties shall include: (a) establishment and management of project budgets and schedules for those portions of the Project that are the City's responsibility under this Agreement; (b) management of the design and construction of the City's development obligations for the Project; (c) coordination of the City's efforts and responsibilities with those of the Developer; (d) establishment and management of effective communication between and among the Parties to this Agreement; (e) ongoing communication with the Mayor and City Council, City Manager, and other City officials as required or necessary to consummate the transactions contemplated herein; (f) communication with neighborhood or community interest groups and stakeholders regarding the progress of the Project and key decisions related thereto; (g) procurement of all necessary governmental approvals related to the disposition of property under this Agreement; and (h) serve as an ombudsman for the City in connection with the City's involvement with the Project. These functions may be delegated by the City and the Project Manager to other appropriate City employees on a part-time basis or a project team may be identified to assist the Project Manager. Regardless of such delegation, the Project Manager shall be responsible for the ultimate completion of the Project Manager's functions. The City shall notify the Developer in writing of the person or persons designated as Project Manager. The Project Manager shall communicate frequently with the Developer and its representatives on relevant matters. Developer has the right to request a replacement Project Manager if it is deemed by the Developer to be beneficial to the project.

Section 2.2 Expeditious Processing. The City shall process in an expeditious manner all actions necessary to permit the development of the Property in accordance with the City's Building Codes, Land Use Code (LUC), and this Development Agreement including, but not limited to, any applications by the Developer for specific plans, subdivision plats, and other development approvals and licenses.

Section 2.3 Alternate Materials and Methods. Nothing in this Article shall in any way limit Developer's right to seek approval of alternate materials, methods of design, and methods of construction provided that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the technical codes in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

Section 2.4 Anti-Moratorium. No moratorium, as that term is defined in A.R.S. § 9-463.06, shall be imposed on the Premises unless it is imposed pursuant to an ordinance that complies with A.R.S. § 9-463.06, as it may be amended.

Section 2.5 Infrastructure Requirements. The City shall, at no cost to Developer, provide all roadway, open space, water, sewer, dry utilities, sidewalk and plaza improvements necessary to serve the Project, in accordance with the Congress Street Master Plan or its replacement. The City shall coordinate with the Developer the delivery of all utility services to both the Parcel I and Parcel II Buildings during the design and construction of such buildings.

The City will retain the right of way for Herbert Avenue between Broadway and Congress Street but provide Developer and the Rialto Theater with dual use easements to be used by each entity, respectively.

Section 2.6 Fourth Avenue Underpass Amenities. The City and the Developer shall work cooperatively with each other and with other governmental and non-governmental persons or entities, as appropriate, to define the program for the maintenance of the fountain area, the elevator and the expanded walkway area of the Fourth Avenue Underpass. Without limiting the generality of the foregoing, the City and the Developer shall jointly define the accent lighting and other features of the expanded walkway area of the Fourth Avenue Underpass. The City and Developer shall work cooperatively in identifying and applying funds to the maintenance described in this Section, including funds generated from construction sales tax revenues and fees paid by Developer or its contractors to the City in connection with the Developer's construction activities for the Project.

Section 2.7 On Site Trash Compaction. The City shall support and approve the Developer's use of on site trash compaction processes for the Project, subject to compliance with all applicable laws, codes and regulations.

Section 2.8 Parcel I Rezoning. Should the City have approved the rezoning of Parcel I adjacent to the railroad tracks from the City zoning classification of I-2 to OCR-2, and should all appeals, lawsuit and rehearing request periods following such rezoning approval have passed without any appeal, lawsuit or rehearing request having been made by the expiration of two hundred and forty (240) days after the Effective Date, this Agreement shall continue in effect. The Parties acknowledge that the decision by the Mayor and Council to adopt the zoning is a legislative act that is taken in the public interest and solely in the discretion of the Mayor and Council. Should City not adopt the Parcel 1 zoning as described above, Developer may choose to only purchase the proposed commercial portion of Parcel I.

Section 2.9 Governmental Agency Funding. The City will cooperate with the Developer to seek available public-sector funding, including New Market Tax Credits, for the Project including funding from federal, state, county, or local

authorities as may be available and as might be required to meet the needs of the Project.

Section 2.10 Archeological and Environmental Clearance. The City shall be responsible for all costs associated with archeological and other historic preservation studies and environmental assessments that are necessary on the Property. The City shall deliver to Developer a clearance letter regarding the archeological review of the Property required under federal and state law within 270 days after the Effective Date. The phase I and II environmental site assessments and historic preservation studies required under federal and state law shall be completed within 180 days after the Effective Date. At no cost to the Developer, any and all environmental site assessments, archeological review and historic preservation studies shall be delivered to the Developer by the City within ten (10) days after the City's receipt of them, and shall name the Developer and its lender as parties entitled to rely thereon.

The City shall remediate all environmental issues on the Property unless the City makes a reasonable determination that such remediation is not economically feasible. Upon a determination by the City and Developer that remediation is not feasible, the City will provide Developer with a replacement site which will be at least equal to the fair market value of the Property. Notwithstanding the foregoing, the City will have no responsibility to remediate the diesel plume that exists below much of the City of Tucson. The parties will mirror the process outlined in this Section 2.10 for assessing and remediating archaeological artifacts and/or remains found on the Property.

Section 2.11 Right of Entry. Promptly following execution of this Agreement, City shall grant Developer a "Right of Entry" in the form routinely used by City to allow Developer right to enter the Property at any time during the term of this Agreement and prior to the Closing for purposes of effecting investigation, testing, due diligence, design, vehicular parking, planning for construction or any other purpose required for development of the Property in the standard form used by City for such purposes. This Right of Entry shall be subordinated to City's ongoing construction activities related to the Fourth Avenue Underpass until such construction is complete.

Section 2.12 Use of Federal Funds. The City recognizes that the Plaza Centro Project was submitted through the City for New Market Tax Credits and if approved will work with Developer to use these funds to aid in the development of the Project. Additionally, in the American Recovery and Reinvestment Act of 2009 federal funds through Private Activity Bonds may become available to the City that would allow the Parking Garage and other aspects of the Project to be financed through these federal funds. The City will work with developer to maximize the use of these Private Activity Bonds for the benefit of the Project.

Section 2.13 Air Right Conveyance and Easements. It is anticipated that development of the Property will include incorporation of private improvements

placed above the public rights-of-way (for example, balconies, walkways and living space) and public property (for example, construction above the public parking garage) and will require ingress, egress and utility and sewer easements for the benefit of the Project. City shall process any requests for conveyance of air rights and such easements pursuant to a deed above public rights-of-way as a standard Real Estate Services ("RES") request using a form developed specifically for the Property and mutually agreed to by the Parties within thirty (30) days after submittal of the first set of building plans for the Property. City shall waive all application fees associated therewith and shall provide air right conveyance and such easements to the Developer at no cost. As long as the request for conveyance or air right and/or easements meets all standard development review requirements, building permit requirements, and resolves the City's liability related to such conveyances, City shall not unreasonably withhold approval of such request.

Section 2.14 Plan Review. Developer may use third-party Building Code and LUC review of all plans for the Property at Developer's sole cost for such review. City shall cooperate with Developer and the third-party reviewers to ensure that Developer realizes the greatest possible reduction of the time required for the review of such plans. City shall, consistent with its adopted policies, expeditiously review and, if appropriate, approve all Developer's plans, permits, and other applications including all construction and building approvals.

Section 2.15 Survey. Within ninety (90) days following the City's execution of this Agreement and at no cost to the Developer, the City shall provide to Developer an ALTA land survey (the "Survey") of the Project Site, which shall be conducted by an Arizona registered land surveyor mutually chosen by City and Developer, shall be certified to Developer, its successors and assigns, their lenders, and the Title Insurer, shall be dated not earlier than 30 days prior to the date of delivery. The Survey will show all matters of record and other existing improvements. Following final determination of the boundaries of the Property, the property lines will be finalized and the updated Survey will serve as the basis for the final legal description of the Property.

Section 2.16 Sewer and Water Credits. Developer (as between Developer and the City) shall be entitled to the benefit of any sewer and water credits associated with the Property and/or any portion thereof. City and Developer shall execute such documents as may reasonably be required to evidence and implement the foregoing.

Section 2.17 Use of Purchase Price Funds City agrees to apply the proceeds from the sale of the Property to finish the as-yet uncompleted improvements to the east side sidewalk of the 4th Avenue Underpass including enhanced lighting and the Barraza-Aviation Parkway.

Section 2.18 City Parking Garage.

(a) ***In General.*** Except as otherwise provided in Sections 2.18(e) and 3.2(b), the City shall construct a public parking garage ("Garage") of between 250 and 450 spaces to be located on the Property to meet public parking needs in the area, including the parking needs of the Project; the Garage shall also be integrated into mixed-use, high density development on the Property. The City shall own, operate, and maintain the Garage and the real property upon which the Garage shall be constructed, unless a separate agreement is agreed to by the City and Developer. The City and Developer shall separately agree to terms regarding the use—at the then prevailing parking rates—of the Garage by residents and customers of the Project; provided that the Developer shall be allocated approximately half of the parking spaces with the option either to purchase such spaces at prorated cost of construction (which cost shall have been paid by the City to third party contractors) or to lease such spaces at a percentage of such cost to be negotiated in good faith between the City and the Developer.

(b) Design. The City may elect to design the Garage through a City procurement process, or to request Developer design the Garage. Should the City request Developer to design the Garage, Developer shall provide the City with a preliminary engineering design cost proposal before signing a contract for the design. The City may reject the Developer's design cost proposal if it does not comport with the City's good faith estimate of the design costs, after which circumstance, the City shall be responsible for the design. In either circumstance, the City shall cause the Garage to be designed within eighteen (18) months after the Effective Date ("Design Period") and to incorporate proposed residential and commercial aspects per the Concept Plan. Should Developer design the Garage, the City shall reimburse the Developer, from time to time, the costs that shall have been paid by the Developer to third party design professionals for such design work no later than thirty (30) days after the Developer delivers to the City written reimbursement requests, together with supporting documentation. The Developer shall allow the City an adequate and reasonable time to complete such review and will cooperate with Developer in good faith to design and build a Garage that will meet the needs of both the City and the Developer in a cost-efficient manner. The City's approval of the Developer's Garage plans shall operate as the City's warranty that the Garage meets the requirements of the City and that the City's construction pursuant to such plans will permit the City to construct the Garage, and the City shall be deemed to have released the Developer from and against any and all liability concerning the Garage plans.

(c) Construction. The City and Developer are aware of parking concerns on the east end of Congress and to this end will continue to allow parking on Parcel II, the old Greyhound site, until the Garage is completed. The City shall manage and complete the construction of the Garage within three and a

half years after the Effective Date (the "Garage Completion Deadline"). During Garage construction, City and Developer will consult regarding value-engineering and auditing the construction of the Garage for a consulting fee (2%), or another mutually agreed-upon method to share savings.

(d) Effect of Developer Construction Activities. In the event that, following construction and opening of the Garage, construction activity by Developer causes a portion of the Garage to be closed or otherwise unavailable for use by the City or the public for parking, and that interruption of use diminishes the Garage revenues to a degree that would cause the Garage revenues to be inadequate to satisfy debt service for the Garage, then Developer shall be responsible for and shall pay to City an amount equal to the diminished revenues attributable to the unusable parking spaces based on prevailing monthly rates.

(e) Within the Design Period, the City may elect to proceed or not to proceed with the design and construction of the Garage if the City determines that such design and construction is not economically feasible. Once this determination has been made, City shall notify Developer of the determination in writing. City is aware that third party agreements and expenditures are dependent on a positive determination to proceed by the City. If the City elects not to proceed as provided in this subsection, Developer shall be entitled to terminate this Agreement and proceed as provided in Section 3.2(b).

ARTICLE 3
DUTIES OF DEVELOPER

Section 3.1 Project Conceptual Design. The Developer shall commence the conceptual design process for the Project upon the Effective Date, and shall deliver such design to the City's Development Review Board, as applicable, for preliminary approval. The Developer intends that the conceptual design of the Project shall include approximately 40,000 square feet of commercial space and approximately 100-150 residential units; provided that the Developer may modify such preliminary concept in the Developer's reasonable discretion.

Section 3.2 Sale of Property.

(a) ***Sale***. At the Closing, City shall sell, assign, transfer, and convey all of the Property as described in Exhibits 1a and 1b to Developer for the Purchase Price (as hereinafter defined), based on the mutual performance by City and Developer of the provisions of this Agreement.

(b) ***Closing***. The Closing shall occur at the office of the Escrow Agent on the business day that is thirty (30) business days after the date on which the Developer has fulfilled all requirements set forth in **Subsection (c)(1-4)** and

the City has completed the City Parking Garage, or such earlier date as Developer and the City may agree. Within 30 business days after the Effective Date, the Developer shall pay to the City an earnest deposit of $5,000 in cash or City approved letter of credit, such deposit to be refunded to Developer upon the date that Developer may terminate this Agreement as provided herein. If Developer defaults in the performance of its obligations under this Agreement, the City may cancel this Agreement and retain all deposits and payments made by Developer. However, upon Developer's written request to the City, to be provided at least five (5) business days before the end of the time period defined in **Subsection (c)** and which shall not be unreasonably denied, the City may, in writing, waive any of the requirements of **Subsection (c)** or may extend the time in which Developer shall meet the requirements thereof. The City may further elect (but only subject to the Developer's concurrence) to extend the Closing, as provided in this Agreement, in the event of delay outside of Developer or City's control.

Notwithstanding anything in this Agreement to the contrary, the Developer shall have the right to terminate this Agreement by written notice to the City at any time prior to the Closing if the Garage shall not have been completed by the City three and a half years after the Effective Date. In the event of such termination, (i) any and all deposits made by the Developer hereunder shall be refunded immediately to the Developer and (ii) within twelve months of the termination the Developer will retain the right to exercise the option to purchase the Property from the City pursuant to that certain Offer to Exchange dated November 1, 2005 and the Purchase Option Agreement dated February 6, 2007; originally between the City, as the optionor, and OT Gila L.L.C., an Arizona limited liability company, as the optionee (with such optionee's interest thereunder having been assigned to the Developer) and the appraisal per Section 3.2.f.

(c) ***Project Deliverables***. During this Period, which shall commence on the Effective Date and end upon the Garage Completion Deadline, the following shall occur:

(1) ***Construction Drawings and Permits***. Developer shall submit to City construction drawings for Parcel I based on the plans described in **Section 3.1** for Developer's portion of the Project and obtain permits for Developer's portion of the Project. Such construction drawings shall be submitted to the City or a third party for review.

(2) ***Entitlements***. Developer shall have completed the proceedings necessary to obtain any rezoning and other land use entitlements required for Developer's portion of the Project, subject to **Section 3.2(b)**.

(3) ***Due Diligence***. Without limiting the obligations of the City under **Section 2.10,** the Developer shall have completed any and all environmental and geotechnical testing of the Property at its sole expense as Developer deems appropriate to satisfy its due diligence.

(4) ***Construction Commencement Ready***. The Developer shall be prepared to commence the construction of the Developer's portion of the Project upon the scheduled completion of the Parking Garage referenced above in Section 2.18; such preparations shall include obtaining permits required to commence construction of the Developer's portion before completion of the Parking Garage.

(d) ***Acceptance of Property.*** By taking possession from City of any or the entire former Greyhound site (Parcel II), Developer accepts the former Greyhound site in the condition existing as of the Closing. City makes no representation or warranty with respect to the condition of the former Greyhound site and shall not be liable for any latent or patent defect in the former Greyhound site. Prior to the Closing and at its sole expense, Developer shall conduct a due diligence investigation concerning the condition of the former Greyhound site, including, without limitation, the use or occupation that may be made of the former Greyhound site, City's title to the former Greyhound site, and any subsurface or soil or fill conditions or any latent defects of the former Greyhound site. After the Closing, the City shall not be liable for any claims relating to the condition of the former Greyhound site and City shall not be required under this Agreement to remediate any environmental or other condition of the former Greyhound site.

(e) ***Purchase Price and In-Lieu Payments.*** The City shall sell the Property to Developer for the Purchase Price, based on an appraised value of the site as City shall obtain from a mutually-approved appraiser from the list of pre-selected appraisers from the City's Procurement Department, within ninety (90) days of the effective date of this Agreement, minus $100,000. The Purchase Price will accrue interest at either the One Year LIBOR or 4% per annum, whichever rate is higher, until the Closing.

(f) ***Escrow***.

(1) ***Establishment of Escrow***. The City shall establish an "Escrow Account" with First American Title Agency of Arizona, Inc., 1880 E. River Road, Suite 120, Tucson, Arizona, 85718, responsible for managing that account and the Closing of this transaction. This Agreement shall constitute escrow instructions and a fully executed copy or counterpart copies shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, Developer and City agree to execute the same; however, such instructions shall be construed as applying only to Escrow Agent's employment and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

(2) ***Cancellation of Escrow***. If the escrow fails to close because of City default, City shall be liable for all customary escrow cancellation

charges. If the escrow fails to close because of Developer's default, Developer shall be liable for all customary escrow cancellation charges. If the escrow fails to close for any other reason, City and Developer shall each be liable for one-half (1/2) of all customary escrow cancellation charges.

(g) ***Closing Costs.***

(1) ***City's Closing Costs***. Upon the Closing, City shall pay all recording costs, one-half (1/2) of the escrow charges and the cost of the Owner's Title Policy (as defined herein) except as otherwise provided in **Section 3.2(i)(4).**

(2) ***Developer's Closing Costs***. Upon the Closing, Developer shall pay one-half (1/2) of the escrow charges and that portion of the cost of the Owner's Title Policy which exceeds the cost of a standard coverage title policy in the full amount of the Purchase Price and the full cost of any additional endorsements that Developer may request.

(h) ***Deed***. At the Closing, City shall convey title to the Property to Developer by special warranty deed (the "Deed").

(i) ***Title and Title Insurance.***

(1) ***Title Report***. No later than 20 days following the date of the completion of the Survey of the Property, Escrow Agent shall deliver a current Commitment for Title Insurance or a Preliminary Title Report (the "Title Report") on the Property from the Title Insurer to Developer and City. The Title Report shall show the status of title to the Property as of the date of the Title Report and shall be accompanied by legible copies of all documents referred to as title exceptions in the Title Report.

(2) ***Title Review Period***. Developer shall have a period of time ending at 5:00 PM MST, thirty (30) days after the receipt of the Title Report and receipt of the Survey, to review the Title Report and Survey and to give City and Escrow Agent notice of any title exception or survey item which is unacceptable to Developer. Developer shall have an additional five (5) business days after receipt of any amended Title Report and any underlying title exception documents relating to such amendment (or any Survey amendment) to give City and Escrow Agent a notice of any title exception or survey item not previously listed which is unacceptable to Developer. If Developer gives a notice of dissatisfaction as to any exception to title or survey option as shown in the Title Report or amended Title Report, City shall have 5 business days of receipt of Developer's notice to notify the Developer in writing of whether the City shall take reasonable steps to cure such objection

on or prior to the Closing. If the City's intention is to not cure any such objection, the Developer may, at its sole and absolute discretion, elect to cancel this Agreement and obtain a full refund of the Earnest Money or elect to waive objection to the title exception and proceed with the Closing. Failure by the City to notify the Developer of its intention shall be deemed its intention to cure any objection.

(3) ***Approval or Disapproval of Status of Title***. Developer's failure to timely approve or disapprove a title exception or survey item shall be deemed an approval of title or the survey as described in the Title Report, or amended Title Report, and a waiver of Developer's right to cancel this Agreement according to this Section.

(4) ***Owner's Title Policy***. Provided Developer approves the status of title and survey to the Property, City shall cause Escrow Agent to provide Developer with an owner's policy of title insurance (the "Owner's Title Policy") at the Closing or as soon thereafter as is reasonably possible. The Owner's Title Policy shall be issued by the Title Insurer in the full amount of the Purchase Price, be effective as of the Closing date, and shall insure Developer that fee simple title to the former Greyhound site is vested in Developer, subject only to: (i) the usual printed exceptions and exclusions contained in such title insurance policies; (ii) the exceptions to title approved (or deemed approved) by Developer as provided for in **Sections 3.2(i)(1)** and **(2)**; and (iii) any other matter approved in writing by Developer or resulting from the acts of Developer or Developer's agents. In the event Developer requests an extended coverage title policy to be issued, Developer shall pay any additional premium or cost therefor (in excess of the premium for standard coverage) and shall pay for and satisfy any conditions and requirements relating thereto.

(5) ***Closing Actions***. At or prior to the Closing, the Parties shall do and perform all acts, pay all sums and execute, acknowledge if required, and deliver all documents and instruments proper, desirable or convenient for the purpose of fully effectuating the Closing in accordance with the provisions of this Agreement. Any such document or instrument to be executed and delivered in connection with the Closing, unless attached as an Exhibit hereto, shall be in the form, if any, regularly utilized by the Escrow Agent modified to conform with the provisions hereof. If the Escrow Agent does not regularly utilize a form of any such document or instrument, the form of such document or instrument shall be as reasonably agreed upon by the Parties.

(j) ***Taxes, Fees, and Other Developer Payables.*** City and Developer acknowledge that after the Closing, Developer is responsible for all taxes, assessments, utility services, and all other governmental impositions ("Impositions") with respect to the former Greyhound site.

(k) ***Default by Developer.*** If Developer materially breaches this Agreement and such breach is not cured by Developer within ninety (90) days of receipt of notice from the City of such breach, then the City shall be under no obligation to perform its obligations under this Agreement unless and until Developer shall have cured its breach; and City shall be entitled to pursue all damages and remedies available under Arizona law, including terminating this agreement. Notwithstanding anything to the contrary contained in this Agreement, Developer will not be deemed to be in breach of this Agreement or the Development Agreement if Developer is unable to secure financing for any portion of the Scope of Work on commercially reasonable terms. Such inability to secure financing will be deemed outside of the control of Developer and the City will extend associated time periods for performance for the length of the delay, for no less than 2 years following City's Garage Completion Deadline, pursuant to **Section 2.18**. If Developer has been unable to secure commercially reasonably financing and to commence construction of the Project within 2 years of City's Garage Completion Deadline, City shall have the right to rescind the purchase of the Property, and shall reimburse Developer for the Purchase Price. In addition, City may elect to purchase any or all of Developer's plans and permits from Developer for Developer's invoiced and paid costs for any so-elected plans and permits.

Section 3.3 Compliance with Laws and Regulations. After the Closing and until the termination of this Agreement under **Section 5.26,** Developer shall, at its expense, comply with all existing and future federal, state, county, and municipal laws, ordinances, rules, and regulations in connection with the use, operation, maintenance, and construction of all facilities on the Property.

Section 3.4 No Unlawful Occupancy. After the Closing and until the termination of this Agreement under **Section 5.26**, Developer shall not use, occupy, permit, or suffer the Property or any part thereof to be used or occupied for any unlawful or illegal or immoral business, use, or purpose, nor for any disreputable or hazardous business use or purpose, nor in such a manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future governmental laws, ordinances, requirements, orders, directions, rules, or regulations. Developer shall immediately upon the discovery of any such unlawful, illegal, immoral, disreputable, or hazardous use take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants, or other persons causing or contributing to such unlawful, illegal, immoral, disreputable, or hazardous use.

Section 3.5 Standards for Construction of Improvements.

(a) Before the Developer's construction begins on the Property, Developer shall present to City for approval the name of the contractor selected for the work.

(b) Developer shall use and employ only licensed, bonded, and qualified contractors.

(c) All improvements shall be constructed in a good, workmanlike, and first-class manner and constructed and maintained in compliance with all applicable laws, rules, ordinances, and regulations

(d) All improvements shall be built to standards adopted by the City, as set forth in City Code or other development standards promulgated by authorized City officials.

(e) No improvements or construction activities of Developer shall cause an interruption or closure of the linkage to the 4th Avenue Underpass for pedestrian use.

Section 3.6 Governmental Approvals. Developer shall obtain all necessary government approvals, permits, or licenses that are necessary to Developer's construction, operation, use, or improvement of the Property. If any certificate, permit, license, or approval issued to Developer is cancelled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority, Developer shall make every effort to effect necessary remedies. Failure to do so shall constitute default under this Agreement.

Section 3.7 Zoning and Code Compliance. Construction of the improvements shall be in conformance with the requirements of the LUC and other applicable Tucson Code provisions. This provision shall not preclude or limit Developer's right to seek text amendments, rezoning, or variances as may be permissible under and in accordance with the LUC and Arizona law. This Agreement shall not in any way limit or preclude City or any of its boards, commissions, agencies, or officers from exercising such discretion as it or they may have with respect to any such relief requested by Developer; provided that the City agrees to support any LUC and other Tucson Code variances reasonably requested from time to time by the Developer and related to the Project, which variances may be subject to review and approval by the City's Board of Adjustment, including without limitation variances related to loading and unloading of vehicles, vehicular parking, etc.

Section 3.8 Ownership of Improvements. All improvements constructed or to be constructed by the Developer on the Property shall be and remain owned by the Developer, subject to the terms and obligations provided for in this Agreement.

Section 3.9 Statutory Compliance for Construction involving Public Funds. Construction of any improvements on the Property that are funded all or in part with public funds, shall be accomplished in conformance with the requirements of A.R.S. Title 34 and A.R.S. § 48-4204(C). These provisions generally require

publicly funded construction projects to be competitively bid and awarded to the lowest qualified bidder.

Section 3.10 Coordination of Maintenance and Design. Developer (from the Closing until the termination of this Agreement under **Section 5.26**) shall at its own cost and expense maintain in safe and substantial order and clean condition all improvements on the former Greyhound site and their full equipment and appurtenances, both inside and outside, structural and nonstructural, no matter how the need or desirability for repairs may occur, and whether or not made necessary by wear, tear, or defects, latent or otherwise, and shall use all reasonable precautions to prevent, and shall promptly repair or restore, any waste, damage, or injury. Developer (following the Closing) shall also at its own cost and expense maintain in safe and substantial order and condition, and free from dirt, mud, rubbish, graffiti, and any and all other obstructions or encumbrances the sidewalks, vaults, areas, and curbs in front of and adjacent to the former Greyhound site.

In addition, Developer will work with third parties such as the Fourth Avenue Merchant's Association and the Downtown Tucson Partnership to ensure the maintenance of the fountain, pedestrian passageway and vegetation to be installed on the Fourth Avenue underpass project. Developer will expend $100,000 at 191 East Toole for the benefit of Skrappy's within three (3) years of the Effective Date of this Agreement.

Section 3.11 Dedication of Public Rights-of-Way, Public Facilities to the City. The City shall permit Developer to dedicate any of the Property for streets, sewer easements, drainage rights-of-way, and other necessary public infrastructure in the Project upon completion of the Project by the Developer pursuant to plans and specifications approved by the City. Developer agrees to dedicate public pedestrian rights of way through the Project along the Fourth Avenue alignment between Broadway and Congress, and from the Fourth Avenue underpass elevator to the Congress Street crosswalk. A depiction of these pedestrian rights-of-way is attached as Exhibit 2.

Section 3.12 Insurance. Prior to entry upon the Project pursuant to a right of entry and continuing until the termination of this Agreement, with respect to portions of the Project owned by the City and occupied by the Developer, under **Section 5.26**, Developer shall (or shall cause its contractors and consultants to) maintain and keep in force insurance, naming City as an additional insured, if applicable, of the following types, said insurance policy to be provided to the City prior to the execution of this Agreement:

(a) During the Developer's construction of the Project, Developer shall ensure that Builder's Risk insurance shall be maintained for each respective phase by its contractor(s) in an amount sufficient to replace the value of work performed by the Developer on the Project. (b) General liability insurance with a combined single limit of not less than $2,000,000 for injury to or death

of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property insuring against any and all liability of City and Developer including, without limitation, coverage for contractual liability and broad form property damage.

(b) Workers' Compensation insurance in accordance with the laws of Arizona.

ARTICLE 4
JOINT DUTIES

Section 4.1 Project Schedule. Within one hundred and eighty (180) days of the Effective Date, the Parties shall jointly develop a schedule outlining the various design, permitting, approval, and construction activities at the Project (the "Project Schedule"). The Project Schedule shall include all of the critical path milestones identified by the Parties that can be used to determine progress towards completion of the various responsibilities and duties of the Parties under this Agreement. The Project Schedule may be amended from time to time to more accurately reflect timing of various activities that will occur at the Project Site. If the Parties identify conflicts between projects or tasks that would require a modification to the terms of this Agreement and jointly agree that a modification to the Agreement is in order, then the Parties shall seek to agree to terms of such an amendment. The Parties shall meet during the course of the Agreement to review the Project Schedule and make any adjustments as are necessary to ensure the timely completion of projects.

Section 4.2 Community Outreach. The Parties shall meet on a regular basis to discuss community outreach efforts and coordinate public communication to best involve the community in the progress of the project. Where joint presentations to community or regulatory boards are required, the Parties shall coordinate their presentations in advance in order to ensure consistent communication.

ARTICLE 5
GENERAL PROVISIONS

Section 5.1 Agreement to Meet, Confer, and Provide Reports. Both the City and Developer shall provide each other with quarterly reports and updates sufficient to inform the other as to progress made concerning their obligations and responsibilities under this Agreement.

Section 5.2 Successors and Assigns. Subject to the provisions of this Section, all of the provisions of this Development Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties to this Development Agreement pursuant to A.R.S. § 9-500.05(D). The Developer may assign all or a

portion of its rights and obligations under this Development Agreement as follows:

(a) The assignment is by written instrument, expressly assigning such rights and obligations and recorded in the official records of Pima County, Arizona.

(b) The Developer has provided prior written notice of the assignment to the City and the City has approved the assignment.

(c) The rights and obligations of the Developer shall be assignable only if expressly stated in writing with the prior approval of the City.

(d) The City Manager or designee may provide consent to an assignment on behalf of the City consistent with this Section. If the City fails to object in writing to the assignment within fifteen (15) days of the date of the notice, the City shall be deemed to have consented to the assignment.

(e) The City shall not unreasonably withhold or delay providing consent to any assignment requested by the Developer as provided in this Section.

Section 5.3 Notices. All notices, requests, demands, and other communications under this Agreement shall be sufficiently given if personally delivered or mailed, certified mail, return receipt requested, or express delivery service with a delivery receipt to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

City:	City of Tucson, City Manager's Office P.O. Box 27210 Tucson, AZ 85726-7210
With copies to:	City of Tucson, Real Estate Division P. O. Box 27210 Tucson, AZ 85726-7210
	City of Tucson, City Attorney's Office P.O. Box 27210 Tucson, AZ 85726-7210
Developer:	OT Kino L.L.C. 2940 North Swan Road #212 Tucson, Arizona 85712

Section 5.4 Recordation. This Development Agreement shall be recorded in its entirety in the official records of Pima County, Arizona, not later than ten (10) days after this Development Agreement is executed by the Parties.

Section 5.5 Amendments. No change or addition may be made to this Development Agreement except by a written amendment executed by the Parties. Within ten (10) days after any amendment to this Development Agreement, such amendment shall be recorded in the official records of Pima County, Arizona.

Section 5.6 Default; Remedies.

(a) Dispute Resolution Meeting. In the case of a claimed default pursuant to this **Section 5.6**, a non-defaulting Party may not undertake informal arbitration as described in **Section 5.6(b)** or file litigation to exercise its remedy unless the non-defaulting Party gives the defaulting Party a notice requesting a meeting of the chief executive officer (CEO) (meaning the City Manager and, with respect to the Developer, the Chief Executive Officer thereof) of each of the Parties and establishing a weekday date for the meeting within not fewer than seven (7) and not more than fourteen (14) days of the notice. The respective CEO's of the Parties shall meet on the day noticed and engage in good faith discussions in an attempt to resolve the claimed event of default. The meeting may be continued until the non-defaulting Party calling the meeting of the defaulting Party elects not to participate further. If the above process does not resolve the claimed default, then each Party shall be entitled to pursue its remedies pursuant to **Section 5.6**. This **Section 5.6(a)** shall also be applicable to disputes or disagreements under this Agreement, in which case either Party may provide notice to the other calling for a CEO Meeting before **Section 5.6(b)** is invoked.

(b) Informal Arbitration. When a disagreement, dispute, or default is alleged to exist under this Agreement, any Party whose agreement, consent, or approval is required may initiate this dispute resolution process by written notice to the other Party whose consent is required. The affected Parties shall select a person (an "Arbitrator") to resolve the dispute. The Arbitrator shall set the timing, procedures, and rules for resolving the dispute. The Arbitrator shall be independent of the Parties and shall not have had a business relationship with any Party within the last five (5) years. The Arbitrator shall be a person who (a) is a resident of Pima County, and (b) has substantial experience in resolving complex business issues in a public or private context. If after ten (10) days the affected Parties cannot agree on the person who will be the Arbitrator, then the affected Parties shall meet and each shall submit two (2) qualified candidates' names, the resulting names shall be placed in a vessel, and the first name drawn will be the Arbitrator. The Arbitrator's fees shall be paid equally by the affected Parties. The Arbitrator's decision shall not be binding on the Parties nor be introduced in court proceedings initiated by a Party alleging a breach under this Agreement but is a prerequisite to filing a complaint in Superior Court.

(c) Required Notice. Except as otherwise provided in this Agreement, failure or unreasonable delay by any party to perform any term or provision of

this Development Agreement for a period of sixty (60) days after written notice thereof from another party shall constitute a default under this Development Agreement. The notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured Notwithstanding the foregoing, if the default cannot reasonably be cured within 60 days, then the defaulting party shall have a reasonable period of time to cure such default but not longer than 120 days. If the default is disputed by the alleged defaulting party, the dispute shall be attempted to be resolved in accordance first with **Section 5.6(a)** and second with **Section 5.6(b)**. In the event of an uncured default under this Development Agreement by any Party, the non-defaulting Party may terminate this Agreement upon written notice to the defaulting party and shall be entitled to all remedies in both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date such sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are repaid in full.

Section 5.7 Waiver. Except as otherwise specifically provided herein, no delay in exercising any right to remedy shall constitute a waiver thereof and no waiver by the City or the Developer of the breach of any covenant of this Development Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Development Agreement.

Section 5.8 No Waiver of Strict Performance. The failure of any Party to insist upon a strict performance of any of the agreements, terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that such Party may have and shall not be deemed a waiver of nay subsequent breach or default in any of such agreements, terms, covenants, and conditions.

Section 5.9 Governing Law. This Development Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Development Agreement is subject to the provisions of A.R.S. § 38-511. This Agreement shall not be construed to require the City to perform any act that is prohibited by said laws, the City's charter, laws, and regulations and all other applicable laws nor require Developer to perform any act whose performance is reasonably dependant upon the performance of any act by the City that the City cannot be required to perform.

Section 5.10 Cooperation in the Event of Legal Challenge. In the event of any legal action or proceeding instituted by a third party challenging the validity of any provision of this Development Agreement, the Parties shall cooperate in diligently defending such action or proceeding.

Section 5.11 Severability. If any term, provision, covenant, or condition of this Development Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Development Agreement shall continue in full force and effect, provided that the overall intent of the Parties is not vitiated by such severability.

Section 5.12 No Partnership; Third Parties. It is not intended by this Development Agreement to, and nothing contained in this Development Agreement shall, create any partnership, joint venture, or other arrangement between the Developer and the City. No term or provision of this Development Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party to this Development Agreement, and no such other person, firm, organization, or corporation shall have any right or cause of action under this Development Agreement.

Section 5.13 Good Standing; Authority; Enforceability. The Developer represents and warrants that it is an Arizona limited liability company corporation, duly qualified to do business in the State of Arizona, and is in good standing under applicable state laws. The City warrants that it is a municipal corporation within the State of Arizona. Each of the Parties represents and warrants to the other Parties that the individual(s) executing this Agreement on behalf of the respective Parties are authorized and empowered to bind the Party on whose behalf each individual is signing and that this Agreement is binding upon and enforceable against each such Party in accordance with it terms.

Section 5.14 Names and Plans. Except as otherwise provided in this Agreement, the Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, studies, reports, programs, designs, and work products of every nature at any time developed, formulated, paid for, or prepared by or at the instance of the Developer in connection with the Property. Notwithstanding the foregoing, the Developer shall be entitled to utilize all such materials described herein to the extent required for the Developer to construct, operate, or maintain improvements relating to the Property.

Section 5.15 Time of Essence. Time is of the essence of this Agreement.

Section 5.16 Force Majeure. Notwithstanding any other term, condition, or provision of this Agreement to the contrary, if any party to this Agreement is precluded from timely satisfying or fulfilling any duty or obligation imposed upon it due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God, an order of a court enjoining either party from performing the tasks required under this Agreement, work stoppages due to archeological or environmental findings, or other events beyond the reasonable control of such party, the time period provided herein for the performance by such party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events.

Section 5.17 Attorneys' Fees. If any Party brings a civil action against another Party to enforce or terminate this Agreement or to recover damages for the breach of any of the provisions, covenants, or terms of this Agreement, the prevailing Party shall be entitled to recover, in addition to any relief to which such prevailing Party may be entitled, all costs, expenses, and reasonable attorneys' fees incurred in connection the civil action.

Section 5.18 Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the Agreement's provisions.

Section 5.19 Exhibits and Recitals. Any exhibit attached to this Agreement and each recital shall be deemed to have been incorporated in this Agreement by this reference with the same force and effect as if it were fully set forth in the body of the Agreement.

Section 5.20 Effective Date. This Agreement is effective upon execution by all of the Parties and shall be referred to as the Effective Date.

Section 5.21 Authorization for Execution. The Mayor and Council have authorized the execution of this Development Agreement by Resolution No. 21313 to which this Development Agreement is attached.

Section 5.22 Non-Liability of Officials, Employees and Agents. No member, official, employee, or agent of the City shall be personally liable to Developer in the event of any default or breach of this Agreement by the City or for any amount which may become due to Developer or any of its successors in interest.

Section 5.23 No Liens. Prior to the Closing, without the prior written consent of the City, Developer shall not place a lien or other encumbrance on the Property or Project nor pledge the Property or Project as collateral for any debts or financing.

Section 5.24 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. Delivery of original, facsimile, or PDF signatures transmitted by email shall be effective to bind the Parties hereto.

Section 5.25 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties pertaining to the subject matter of the Agreement and supersedes all offers, negotiations, and other agreements of any kind. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are superseded and merged in this Agreement. There are no representations or understandings of any kind not set forth herein.

Section 5.26 Termination of Agreement. This Agreement shall terminate as provided in **Sections 2.18(c) or 3.2(b)**.

IN WITNESS WHEREOF, the parties have executed this Development Agreement as of the dates written below.

City of Tucson, an Arizona municipal corporation

By:_____
Mayor

Date: June 9, 2009

Attest:

_____
City Clerk June 9, 2009

Approved as to form:

_____
City Attorney

OT King, L.L.C., an Arizona limited liability company

By:_____

Print Name JIM CAMPBELL

Manager

EXHIBITS

1. Exhibit 1a: Identification of Parcel I Property
2. Exhibit 1b: Identification of Parcel II Property
3. Exhibit 2: Site Plan of the Project Site

EXHIBIT 1a to Exhibit A to Resolution No. 21313

Identification of Property

PLAZA CENTRO PARCEL (NORTH)

Those portions of Lots 1, 4, 5, and 8 of Block 91, Lots 2, 3, 6, 7, 8, 10, 11 of; and the alley contained within, Block 85, and Fourth Avenue and Tenth Street according to the official map of the City of Tucson recorded in Book 3 of Maps and Plats at Pages 70 and 71, all contained within that certain parcel conveyed to the City of Tucson by Quit Claim Deed recorded in Docket 10892 at Page 401 in the office of the Pima County Recorders, Pima County, Arizona;

Said portions being more particularly described as follows;

Commencing at the intersection of the centerline of Fourth Avenue subway as recorded in Deeds of Real Estate at Book 59 at Page 254 in the office of said Pima County Recorder, with the monument line of Toole Avenue, said point being a found 1 ½" aluminum cap with no markings, from said point a found 2" brass disk in concrete stamped "RLS 24532" in said monument line of Toole Avenue bears South 45°34'03" East, 230.94 feet;

Thence North 12°45'06" East, 32.45 feet along the centerline of said Fourth Avenue subway to the northeast right-of-way of Toole Avenue;

Thence South 45°35'43" East, 113.64 feet along said northeast right-of-way;

Thence North 44°24'17" East, 0.85 feet to the Point of Beginning;

Thence South 45°35'43" East, 268.16 feet parallel with and 0.85 feet northeasterly from said northeast right-of-way to a point of curvature on a tangent curve concave to the north;

Thence easterly along the arc of said curve to the left, having a radius of 19.38 feet, through a central angle of 61°29'36", for an arc length of 20.79 feet to a point of compound curvature on a tangent curve concave to the northwest;

Thence northeasterly along the arc of said curve to the left, having a radius of 134.38 feet, through a central of 16°47'17", for an arc length of 39.37 feet to a point of tangency;

Thence North 56°07'24" East, 46.20 feet to a point of curvature on a tangent curve, concave to the south;

Thence easterly along the arc of said curve to the right, having a radius of 84.64 feet, through a central angle of 49°26'11", for an arc length of 73.03 feet to a point of non-tangency;

HDR Engineering, Inc.
5210 E. Williams Circle
Suite 530
Tucson, AZ 85711-4459
Phone (520) 584-3600
Fax (520) 584-3624
www.hdrinc.com

Thence North 44°24'17" East, 10.01 feet to the southwesterly right-of-way of the Union Pacific Railroad as it presently exists;

Thence North 45°35'43" West, 437.11 feet along said right-of-way;

Thence South 44°24'17" West, 9.77 feet;

Thence South 12°31'28" West, 70.84 feet;

Thence North 77°28'32" West, 13.51 feet;

Thence North 45°34'00" West, 21.25 feet;

Thence South 44°26'00" West, 11.89 feet;

Thence North 45°34'00" West, 14.26 feet;

Thence South 44°26'00" West, 10.17 feet;

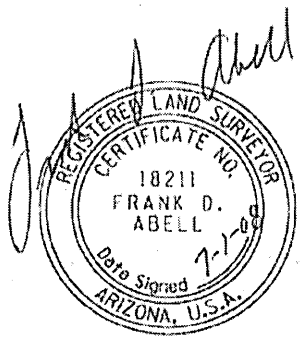
Thence South 12°31'28" West, 21.88 feet to a point of curvature on a tangent curve concave to the east;

Thence southerly along the arc of said curve to the left, having a radius of 100.17 feet, through a central angle of 38°23'31", for an arc length of 67.12 feet to a point of non-tangency;

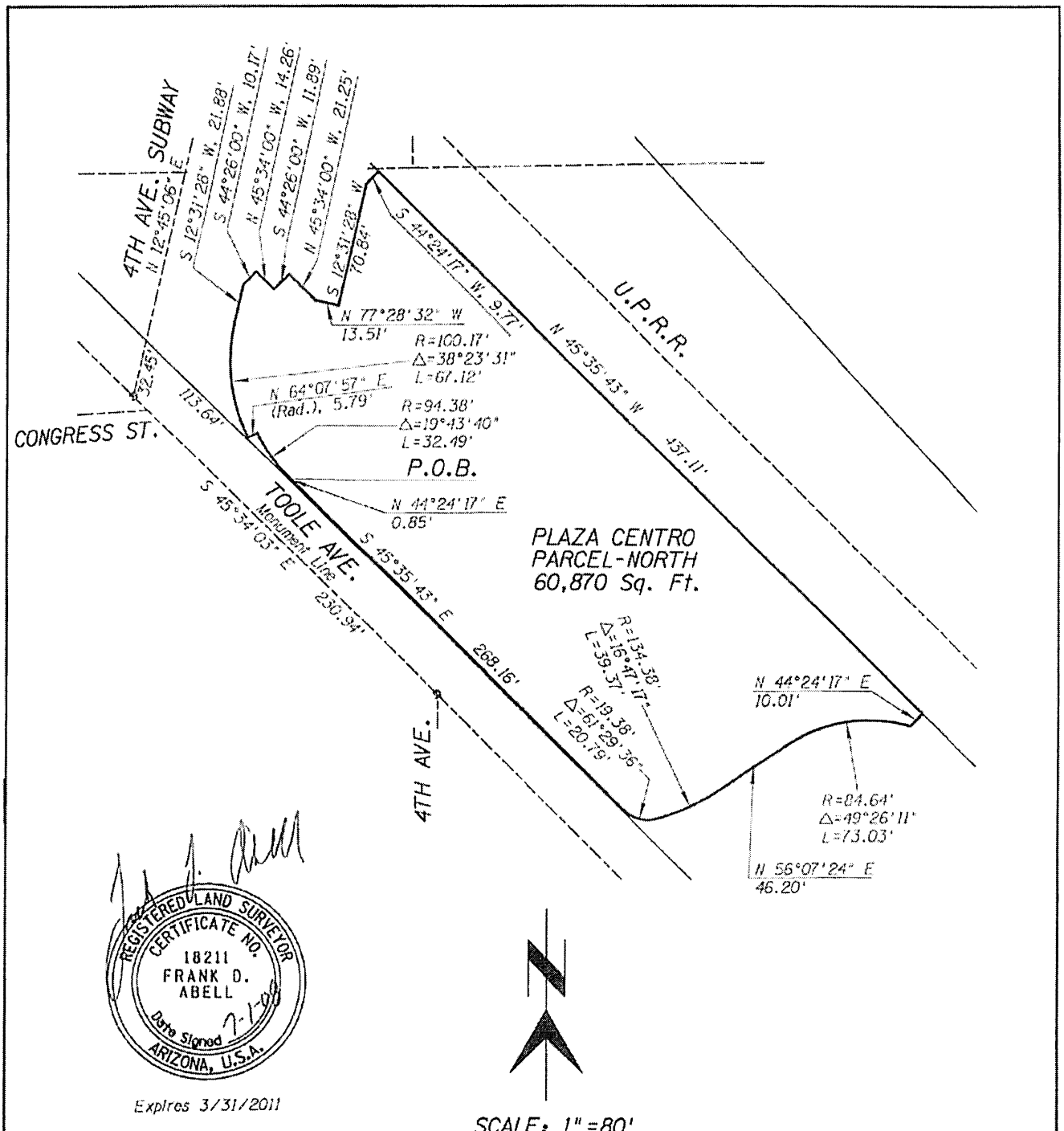
Thence North 64°07'57" East, 5.79 feet to a point of curvature on a non-tangent curve with a local radial bearing of South 64°07'57" West, said curve being concave to the northeast;

Thence southerly along the arc of said curve to the left, having a radius of 94.38 feet, through a central angle of 19°43'40", for an arc length of 32.49 feet to a point of tangency,said point being the Point of Beginning.

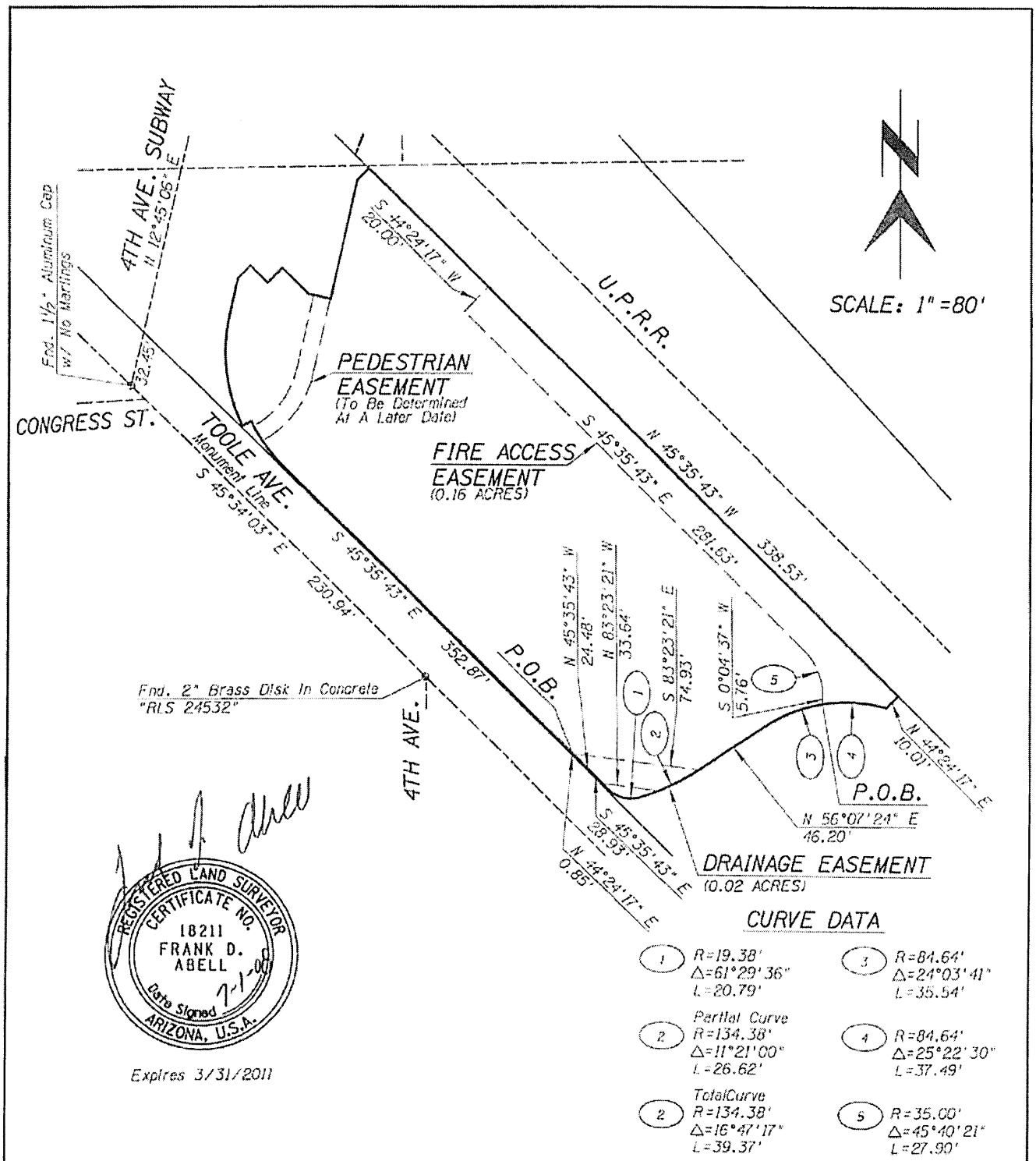
The above described parcel contains an area of 1.40 acres, more or less.



Expires 3/31/2011



Drawn: FDA Scale: See Above Approved: City Engineer	BARRAZA AVIATION PARKWAY - 4TH AVENUE PLAZA CENTRO PARCEL -NORTH	City of Tucson, Arizona ENGINEERING DIVISION PLAN #



Drawn: FDA Scale: See Above Approved: City Engineer	BARRAZA AVIATION PARKWAY - 4TH AVENUE PLAZA CENTRO PARCEL-NO. EASEMENTS	City of Tucson, Arizona ENGINEERING DIVISION PLAN #

EXHIBIT 1b to Exhibit A to Resolution No. 21313

Identification of Property cont.

PLAZA CENTRO PARCEL (SOUTH)
PUBLIC UTILITY AND PEDESTRIAN EASEMENT

That portion of Fourth Avenue according to the official map of the City of Tucson recorded in Book 3 of Maps and Plats at Pages 70 and 71, in the office of the Pima County Recorder;

Said portions being more particularly described as follows;

Commencing at the centerline intersection of Broadway Boulevard, formerly known as Eleventh Street and Fifth Avenue, said point being a found 2" brass disk in concrete with punch only;

Thence North 89°06'21" East, 249.45 feet to a found 1 ½" aluminum cap stamped "RLS 9432"; on the centerline of said Broadway Boulevard;

Thence North 01°21'53" East, 39.15 feet to the southwest corner of said Lot 12, Block 91, said corner being a found P.K. nail with no tag;

Thence North 0°57'25" West, 1.01 feet along the west line of said Lot 12;

Thence North 89°05'36" East, 200.31 feet along a line parallel with and 1.01 feet northerly from at right angles the north right-of-way of Broadway Boulevard, as it presently exists to the Point of Beginning.

Thence North 0°45'33" West, 116.53;

Thence South 45°35'43" East, 28.37 feet along the south right-of-way of Toole Avenue as it presently exists;

Thence South 0°45'33" East, 96.37 feet;

Thence South 89°05'36" West, 20.00 feet along said parallel line to the Point of Beginning.

The above described parcel contains an area of 0.05 acres, more or less.

HDR Engineering, Inc.
5210 E. Williams Circle
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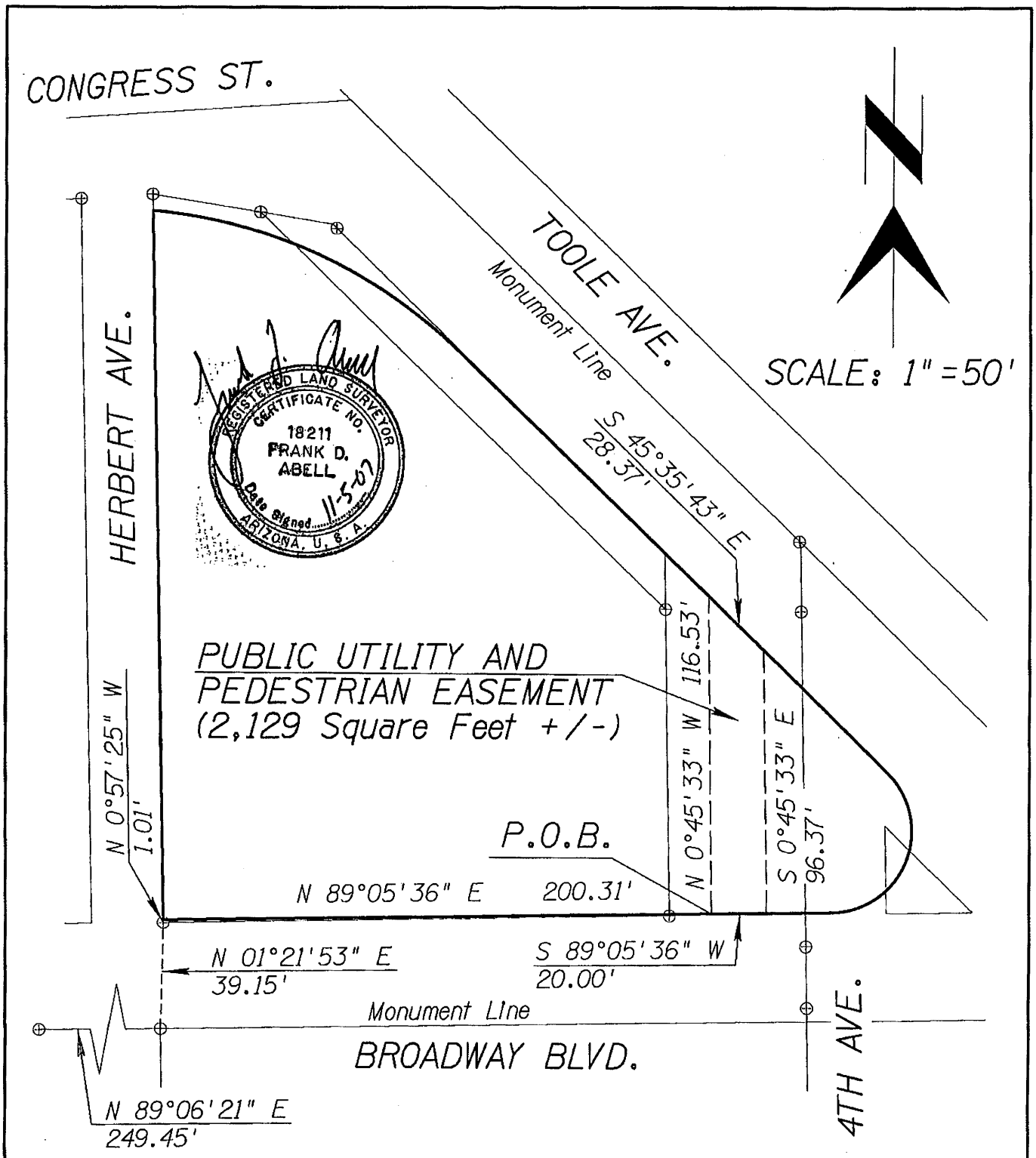


Drawn: FDA Scale: See Above Approved: City Engineer	BARRAZA AVIATION PARKWAY - 4TH AVENUE PUBLIC UTILITY AND PEDESTRIAN EASEMENT	City of Tucson, Arizona ENGINEERING DIVISION PLAN #

PLAZA CENTRO PARCEL (SOUTH)

Those portions of lots 4, 5, 8, 9 and 12 of Block 91, Lot 11 of Block 90, and Fourth Avenue according to the official map of the City of Tucson recorded in Book 3 of Maps and Plats at Pages 70 and 71, and of Toole Avenue according to the City of Tucson Ordinance No. 21, City of Tucson Ordinance No. 24, and Quit Claim Deed recorded in the office of the Pima County Recorder;

Said portions being more particularly described as follows;

Commencing at the centerline intersection of Broadway Boulevard, formerly known as Eleventh Street and Fifth Avenue, said point being a found 2" brass disk in concrete with punch only;

Thence North 89°06'21" East, 249.45 feet to a found 1 ½" aluminum cap stamped "RLS 9432"; on the centerline of said Broadway Boulevard;

Thence North 01°21'53" East, 39.15 feet to the southwest corner of said Lot 12, Block 91, said corner being a found P.K. nail with no tag;

Thence North 0°57'25" West, 26.01 feet along the west line of said Lot 12 to the Point of Beginning;

Thence continuing North 0°57'25" West, 235.65 feet along the west line of Lots 12, 9, 8, 5, and 4 to a point on a non-tangent curve concave to the south, with a local radial bearing of North 05°18'28" East, from said point a found 1 ½" aluminum cap stamped "RLS 9432" on the south right-of-way of Congress Street as it presently exists bears North 0°57'25" West, 6.00 feet;

Thence Easterly along the arc of said curve to the right, having a radius of 185.03 feet, through a central angle of 39°05'48", for an arc length of 126.26 feet, to a point of tangency;

Thence South 45°35'43" East, 219.06 feet to a point of curvature on a tangent curve, concave to the West;

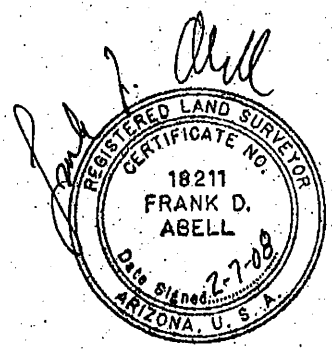
Thence Southerly along the arc of said curve to the right, bearing a radius of 30.00 feet, through a central angle of 134°41'20", for an arc length of 70.52 feet to a point of tangency;

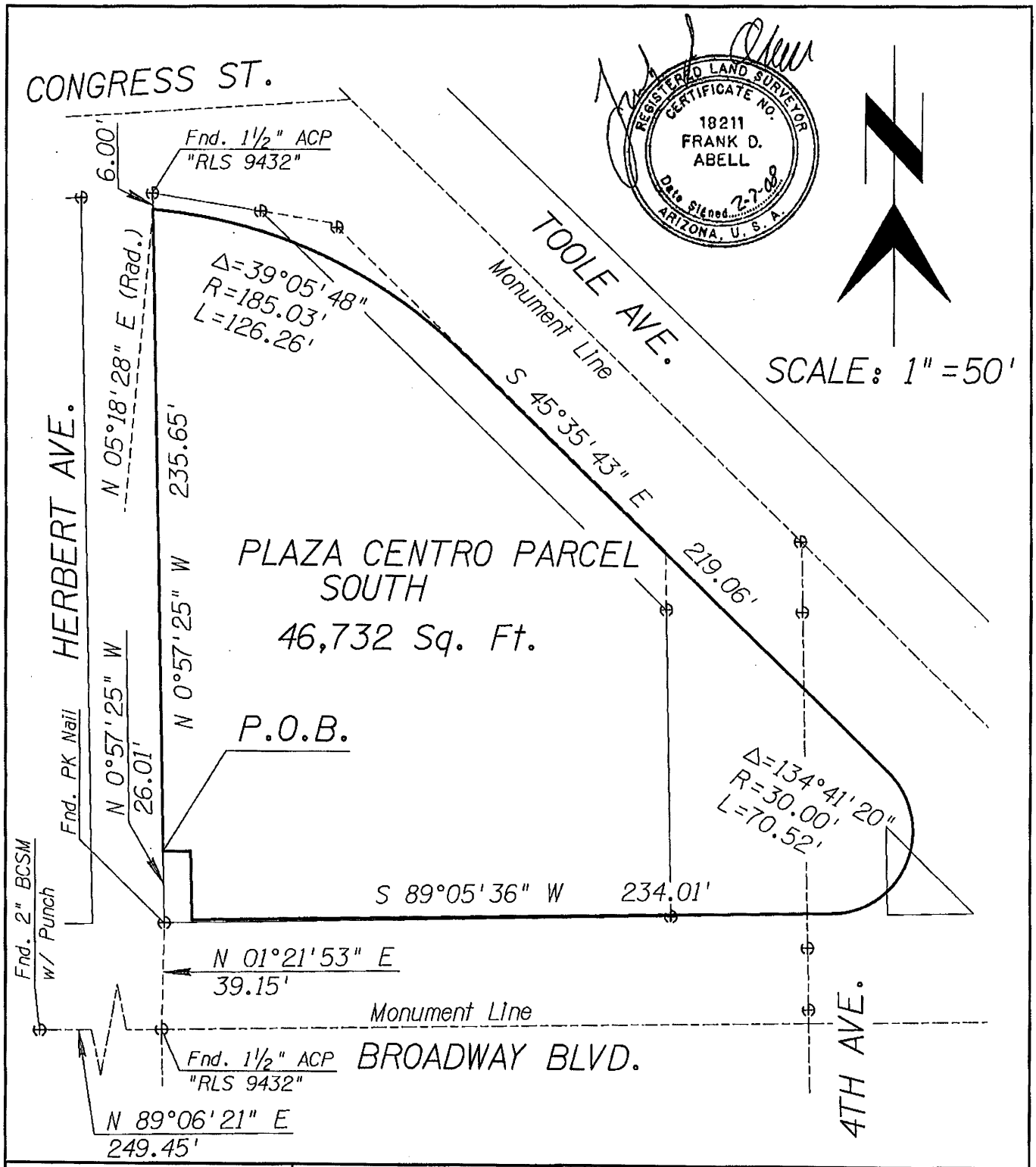
Thence South 89°05'36" West, 234.01 feet;

Thence North 0°57'25" West, 25.01 feet;

Thence South 89°02'35" West, 10.00 feet to the Point of Beginning.

The above described parcel contains an area of 1.07 acres, more or less.

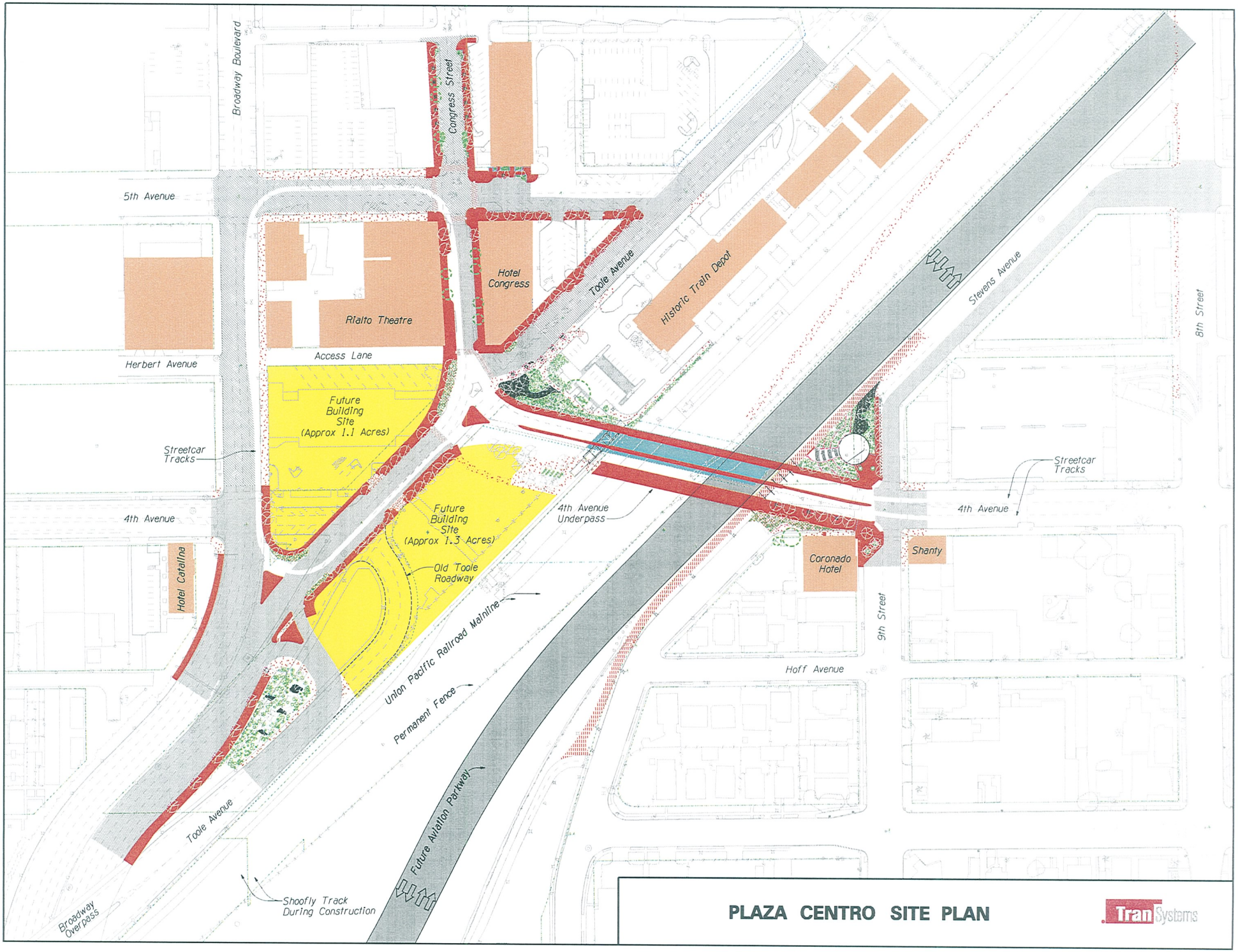




Drawn: FDA Scale: See Above Approved: City Engineer	BARRAZA AVIATION PARKWAY - 4TH AVENUE PLAZA CENTRO PARCEL - SOUTH	City of Tucson, Arizona ENGINEERING DIVISION PLAN #

EXHIBIT 2 to Exhibit A to Resolution No. 21313

Site Plan of the Project Site



PLAZA CENTRO SITE PLAN

TranSystems